IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9267 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANTILAL K SOLANKI

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 9267 of 2001
SUNITA S CHATURVEDI for Petitioner
MR MUKESH A PATEL for Respondent No. 1-2

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 06/05/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The challenge in this petition is against the order of the Central Administrative Tribunal, Ahmedabad Bench, dated 27.4.2000 in Original Application No. 616 of 1999 whereby the application claiming the right of appointment on compassionate ground of the petitioner after the death of his father came to be rejected.

A relevant and material conspectus of facts leading to the rise of this petition may be highlighted at the outset:

(i) The father of the petitioner who was serving in Railway expired on 9.1.1985, while in service.

(ii) At the time of death of father of the petitioner, the petitioner was minor as his birth date has been 11.4.1976.

(iii) The petitioner attained the age of majority upon completion of 18 years and immediately thereafter, an application for appointment on compassionate ground was filed by him on 19.7.1995.

(iv) The petitioner had also personally visited the office of the DRM of Railway authority and had submitted another application on 8.10.1996.

(v) The respondent authority having review of the policy decision for appointment on compassionate ground, issued a circular, through the Railway Board, vide letter dated 22.11.1994 whereby the application for appointment on compassionate ground in case of a minor can be made after attaining the age of majority of three years which was earlier one year.

It becomes, therefore, clear that the petitioner, the unfortunate son of the father who died in harness while serving in Railway, became major on 11.4.1994 and he was required to make an application for the purpose of appointment on compassionate ground on or before 11.4.19947. However, the petitioner had made two representations as stated hereinabove; one in July 1995 and the second, in October 1996.

The Tribunal has, mainly, rejected the application on the ground that the application being Original Application No.616 of 1999 was filed beyond the period of limitation

prescribed under Section 21 of the Administrative Tribunals Act, 1985 ('the Act') and there was no separate application for condonation of delay despite the fact that there was a delay of five years after the accrual of the cause of action as the said application was made on 13.4.1999.

It is explicit from the record and admitted fact that the application before the Tribunal came be lodged on 13.4.1999 and as per the circular referred to hereinabove, raising the period of limitation for filing such application for compassionate appointment from one year to three years, there would be, prima facie, a delay of only two years and not five years as observed by the Tribunal. It is further observed by the Tribunal that the petitioner could have moved such an application within one and one and half years of his attaining the age of majority as prescribed under Section 21 of the Act presumably, and in all probabilities, so as to consider the case of condonation of delay sympathetically and favourably. But, it appears further that such a course or expected discretion to be exercised in favour of the petitioner-original applicant approached before us could not be served on him as the Tribunal found the delay of five years which is, in the light of the aforesaid aspect, is patently, if not latently, erroneous and militating the manifestation articulated in the aforesaid circular of the Railway Board. As observed hereinabove, it is also noticed by us that the Tribunal was not considering the case and has observed that the delay of one and one and half years could have been considered and such an application could have been filed by the petitioner, in our opinion, the Tribunal has committed a serious error on this count which has, unfortunately, led to further serious error and resultant miscarriage of justice which we must put up in a proper and legal shape.

The scheme or a policy of compassionate appointment has purpose and philosophy behind it and such a scheme has been endorsed and approved by catena of judicial pronouncements. Despite the clear provisions of Articles 14 and 16 of the Constitution of India, such an aspect is no longer in controversy as the Railway Board and the respondent authority had earlier framed such a policy and pursuant to the policy decisions, applications were being entertained and considered and the earlier policy also came to be re-considered, re-wrote and re-viewed, as observed hereinabove, raising, inter alia, the age of three years from the date of attaining age of majority by a minor heir of a deceased employee of the Railway. It is, therefore, clear that the benign and philanthropic

concept with such policy is evolved by the Railway Board is further reviewed and relaxed and in all probabilities, so as to see that those minors who, by any reason felt handicapped in making an application for appointment on compassionate ground within one year from attaining the age of majority should be given three years instead of one year period of limitation for entitlement and eligible for making application to the Railway Board. It appears that such a noble, pious and holistic policy decision taken by the Railway Board and placed on record in a form of Circular dated 22.11.1984, as Annexure.B, at page 14, was lost sight of. That is the reason why the Tribunal, though was apparently inclined and willing to condone the delay had it been for a period of one to one and half years instead of five years which is factually unsupportable, unacceptable and unbelievable. We, therefore, find that this view on wrong assumption or mis-reading of Clauses or provisions in the revised policy has, probably, added fuel in fire in rejecting the rightful application for condonation of delay.

After having given a close evaluation and serious examination of the different provisions and Clauses incorporated in the revised Circular dated 22.11.1994 in respect of appointment on compassionate ground, being part of the Supplementary Circular No.3 to Master Circular No.16 at Annexure.B, it has been made imperative in order to translate the object and desideratum of such benign policy a reality, one of the directions incumbents upon the Railway authority is to see that proper guidance is given to the families/applicants regarding the formalities to be completed for compassionate appointment and for that purpose, a brochure giving an outline of procedure including a check list of all the documents to be attached to the application for compassionate appointment should be prepared by each Railway/ Production Unit etc. On being specifically confronted, to our utmost surprise, we were told by the learned Advocate appearing for the Railway Administration that there are no specific instructions in respect of the proper follow-up and implementation of the directions contained in the said Circular. We are, therefore, left with no alternative, but to find and deduce that such incompetency emanates out of a philanthropic and benevolent circular in relation to the appointment on compassionate ground have not been scrupulously adhered to.

Not only that, it is further required that Welfare Wing of the Railway authority shall maintain a register in each Division and Unit containing, inter alia, detailed

particulars of the deceased employees including the date on which the children of the deceased would attain the age of majority etc. and there shall be one column in the register indicating the File Number opened for each case. It may be noted that such a provision is incorporated in the revised policy for not thwarting the rightful claim of the eligible persons. In our opinion, instead of raising such technical and unwarranted objections against the appointment on compassionate ground, it would not have any legal legs to stand, in view of the incompetency on the part of the Railway authority in the revised policy and scheme in relation to appointment on compassionate ground. This aspect has also, unfortunately, lost sight of by the Tribunal and in fact, it would have been better and desirable to draw the attention of the Tribunal on behalf of the Railway Board that these are requirements so as to see that the persons who are entitled and eligible to be appointed after the death of a near and dear and kith and kin, while in service, are not unnecessarily indiscriminated, thwarted or thrown overboard.

We have no hesitation in holding that by taking the overall picture from the provisions incorporated in the scheme by the Railway authority, through the Railway Board, which would clearly go to show that the scheme is not devised to see that the rightful person is given appointment without any further delay and that too, with the help and assistance of the Administration, whereas in the present case, the approach, the defence and the entire objections raised against the rightful appointment are unfortunate and the Tribunal's observation is running diametrically counter to the proposition laid down in the revised scheme of appointment on compassionate ground.

We are sorry to say that despite many celebrated decisions and case law of this Court as well as the Honourable Apex Court in the realm of jurisprudence of delay condonation, again apart from the factual and serious mistake committed by the Tribunal, one more technical aspect is given undue importance by the Tribunal in finding that separate application for condonation of delay was not filed. It is true that, ordinarily, a separate application for condonation of delay with reasons has to be filed. Nonetheless, it cannot be gainsaid that in a given appropriate case, bearing in mind, the ultimate design and desideratum of the scheme or the policy for appointment on compassionate ground, the Court thinks that there was sufficient cause or reasonable grounds for condonation of delay, it could be condoned orally without filing an application. This

proposition of law is also very well settled. Simply on the ground that a separate application is not filed, the substantive right or a substantive matter cannot be thrown to the wind. The procedural or processual justice is designed to cause real justice. It is not to thwart it. It may happen in a given case, as it is in the present case, that if on behalf of the minors, widows or such persons who are, on account of valid reasons, including ignorance, indigence and liability of maintaining large family residing in a farther corner of a village and being unsophisticated persons who, otherwise, are required to be informed by providing registers and making appropriate entries including the date of attaining the age of majority by the Railway Board, could be considered sympathetically and the delay could be condoned even on oral application provided the reasons mentioned therein are found sufficient or reasonable which prevented the party from making an application within the period of limitation prescribed in law and in the present case, under Section 21 of the Act. That is the benign object of Section 21 and that is the reason why a proviso, the Parliament, in its wisdom has incorporated.

In view of the aforesaid factual scenario emerging from the record of the present case, the relevant proposition of law, the latest developments in jurisprudence of condonation of delay and the latest decision of the Division Bench of this Court in the case of C.A.No.2892/01 decided on 29.7.2001 coupled with the incumbency on the part of the Railway Administration and the concerned officers in relation to facilitating the appointment on compassionate ground to the persons who happened to be minors at the time of death of an employee while in service, we have no hesitation in holding that there was sufficient cause and there is a fit and appropriate case for invocation of the proviso attached to Section 21 of the Act, as the representations had been made even prior to the period of expiry of three years upon the attainment of majority by the petitioner and non-consideration and no decision on the same, and also that the application before the Tribunal came to be filed on 13.4.1999 and therefore, in our opinion, the Tribunal has committed a serious error resulting into miscarriage of justice as the substantive justice is sacrificed on the processual justice. Therefore, we find that this petition is required to be allowed condoning the delay as prayed for and directing the authority to consider the case of the petitioner for the purpose of appointment on compassionate ground instead of insisting upon an application to be filed and sending the matter to the

Tribunal when the matter has been travelling in a legal conduit pipe for more than five years. We, therefore, have no hesitation in finding that this is a fit and appropriate case for allowing the petition in exercise of our Constitutional writ jurisdiction.

The petition, therefore, shall stand allowed. The impugned order of the Tribunal shall stand quashed and set aside. The respondent authority is directed to consider the case of the petitioner for appointment on compassionate ground in the light of the policy of the respondent authority, revised from time to time, within a period of three months from today and to place the decision on record of this Court, failing which, the Registry shall bring it to our notice.

With these observations, the petition is allowed and the Rule is made absolute.

(J.N. Bhatt, J.)

(Akshay H. Mehta, J.)

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